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(619) 296-0123

FILED

09 APR 30 PM 12:09

6 Attorney for Plaintiff  
7 CHARLES SMALL

8 CLERK, U.S. DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 BY:

11 DEPUTY

12 UNITED STATES DISTRICT COURT  
13 SOUTHERN DISTRICT OF CALIFORNIA

14 CHARLES SMALL, ) Case No.  
15 Plaintiff, ) '09 CV 913 JM POR  
16 v. ) COMPLAINT AND PLAINTIFF'S  
17 ) DEMAND FOR JURY TRIAL FOR  
18 ) PERSONAL INJURIES BASED ON:  
19 ) 1. VIOLATION OF CIVIL RIGHTS  
20 ) PURSUANT TO 42 U.S. CODE §1983  
21 ) ET. SEQ.;  
22 ) 2. FALSE IMPRISONMENT;  
23 ) 3. NEGLIGENCE.  
24 )  
25 )  
26 )  
27 )  
28 ) Defendants.

29 Comes now plaintiff, CHARLES SMALL, and for his causes of  
30 action against defendants, and each of them, complains and  
31 alleges as follows:

32 GENERAL ALLEGATIONS

33 1. All of the facts and circumstances alleged within this  
34 complaint occurred within the State of California or under

1       circumstances such that the above-captioned District Court has  
2 jurisdiction.

3       2. Plaintiff, CHARLES SMALL, at all times mentioned herein  
4 was a resident of the State of California, and within the  
5 jurisdiction of this court.

6       3. The true names and capacities, whether individual,  
7 corporate, associate or otherwise of defendants, DOES 1-50,  
8 inclusive, are unknown to plaintiff, who therefore sues said  
9 defendants by such fictitious names.

10       4. Plaintiff is informed and believes and alleges that each  
11 of the defendants designated as a DOE is responsible in some  
12 manner for the alleged events and happenings that caused injuries  
13 and damages to the plaintiff, and each of them.

14       5. Plaintiff is informed and believes and alleges that at  
15 all times herein mentioned each of the defendants was the agent  
16 and employee of each of the remaining defendants and was at all  
17 mentioned times acting within the scope of such agency and  
18 employment.

19       6. Plaintiff is informed and believes and alleges that each  
20 fictitiously named defendant and each defendant sued or served as  
21 a business entity or public entity was at all noted times herein  
22 duly organized and licensed under one of the laws of the States  
23 of the United States and the State of California and doing  
24 business in the State of California as required for jurisdiction  
25 of this Court.

26       7. At all mentioned times, defendants MATTHEW MARTEL,  
27 GUILLERMINA HALL MURRAY, SHERIFF WILLIAM KOLENDER, and BONNIE  
28 DUMANIS, and DOES 1-50 were and still are residents of the State

1 of California.

2       8. Defendant MATTHEW MARTEL is the Warden from California  
3 Rehabilitation Center from March of 2008 to today's date,  
4 GUILLERMINA HALL MURRAY was the Warden from California  
5 Rehabilitation Center during 2007 and up to March of 2008,  
6 SHERIFF WILLIAM KOLENDER was and still is the head of and in a  
7 supervisory position at THE GEORGE BAILEY DETENTION CENTER, and  
8 BONNIE DUMANIS was and is currently the District Attorney for  
9 San Diego.

10      9. Defendant entities and DOES 1-50, and each of them,  
11 were created and are existing by virtue of the laws of the State  
12 of California and have their principal place of business in the  
13 State of California. Said defendants are doing business in the  
14 State of California and are therefore subject to the  
15 jurisdiction of this court pursuant to California law and may be  
16 served pursuant to law.

17      10. Plaintiff is informed and believe and allege that at  
18 all mentioned times the events where the incidents occurred was  
19 under the supervision, direction, control, of all named  
20 defendants, and DOE defendants, and each of them, and that each  
21 defendant was operating within the course and scope of their  
22 employment within the State of California.

23      11. On or about February 5, 2007, plaintiff CHARLES SMALL,  
24 who was detained at the California Rehabilitation Center, was to  
25 be released by defendants on the following day of February 6,  
26 2007 but was detained by defendants for an additional 45 days  
27 longer for an evaluation. The petition for detainment occurred  
28 while CHARLES SMALL was still in the custody of defendants. The

1 detainment ended on March 25, 2007, which is the date CHARLES  
2 SMALL was to be released by defendants. However, the District  
3 Attorney, defendant BONNIE DUMANIS, untimely and improperly filed  
4 a petition on March 26, 2007, one day after SMALL could be  
5 legally detained by defendants. CHARLES SMALL was still  
6 improperly and unlawfully detained by defendants after March 25,  
7 2007 and subsequently transferred and unconstitutionally  
8 imprisoned at the George Bailey Detention Facility. CHARLES SMALL  
9 was not released by defendants until March 10, 2008 and was thus  
10 unconstitutionally imprisoned by the California Rehabilitation  
11 Center and the George Bailey Detention Center for 349 days.  
12

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Civil Rights)**

15 12. Plaintiff realleges and incorporates by reference each  
16 and every allegation contained in paragraphs 1 through 11,  
17 above.

18 13. This cause of action arises under the United States  
19 Constitution, particularly under the provisions of the Fourth,  
20 Fifth, Eighth, and Fourteenth Amendments to the Constitution of  
21 the United States, under federal law, particularly Title 42 of  
22 the United States Code, Section 1983.

23 14. During all times mentioned in this complaint,  
24 defendants MATTHEW MARTEL, as an individual, and as the Warden  
25 from California Rehabilitation Center, GUILLERMINA HALL MURRAY,  
26 as an individual, and as the Warden from California  
27 Rehabilitation Center, SHERIFF WILLIAM KOLENDER, as an  
28 individual and on behalf of THE GEORGE BAILEY DETENTION CENTER,

1 and BONNIE DUMANIS, as the District Attorney acting in her  
2 individual and official capacities, and DOES 1-50, having  
3 influence, power, and responsibilities for the California  
4 Rehabilitation Center, the George Bailey Detention Center, and  
5 the Office of the District Attorney. The true names of  
6 defendants DOES 1 through 50 are presently unknown to plaintiff.  
7 Plaintiff seeks leave of court to substitute names of other  
8 defendants for DOE defendants when that knowledge becomes  
9 available to plaintiff.

10 15. During all times mentioned in this complaint, the  
11 defendants and DOES 1-50, inclusive, were acting under color of  
12 law, namely the color of the State of California Constitution,  
13 statutes, laws, rules, regulations, customs and uses.

14 16. During all times mentioned in this complaint, the  
15 defendants and DOES 1-50, inclusive, and each of them,  
16 separately and in concert engaged in acts and omissions which  
17 constituted deprivation of the federal Constitutional rights,  
18 privileges and immunities of the plaintiff, and while these acts  
19 were carried out under color of law, they had no justification  
20 or excuse in law.

21 17. Defendants and DOES 1-50, inclusive, and each of them,  
22 at all times relevant to this action were empowered with the  
23 obligation and the duty to not violate the law and the federal  
24 rights of the plaintiff. Said defendants, and each of them,  
25 with deliberate indifference, failed to perform that duty, and  
26 thereby became a party to injury inflicted upon plaintiff.

27 18. Acting under color of law, the defendants, and DOES 1-  
28 50, and each of them, acted by (1) improperly, unreasonably, and

1 falsely imprisoning a citizen who was acting in accordance with  
2 his constitutional and statutory rights, privileges and  
3 immunities; (2) conspiring to violate the rights, privileges and  
4 immunities guaranteed to plaintiffs by the Constitution of the  
5 United States; and (3) otherwise depriving plaintiff CHARLES  
6 SMALL of his Constitutional rights. As a proximate result of  
7 this knowing and deliberately indifferent conduct of defendants  
8 and DOES 1-50, plaintiff's Constitutional rights were violated.

9 19. On January 24, 2008, the California Court of Appeals,  
10 4<sup>th</sup> District, ruled that CHARLES SMALL was not lawfully being held  
11 by the defendants, and DOES 1-50, and defendants failed to show  
12 that their delay in filing the petition against CHARLES SMALL  
13 resulted in good faith mistake of law or fact. CHARLES SMALL  
14 lawfully should have been released on March 25, 2007, but  
15 defendants, and DOES 1-50, instead unlawfully imprisoned CHARLES  
16 SMALL until March 10, 2008. As a result of the said wrongful  
17 conduct of the defendants, and DOES 1-50, specifically defendants  
18 MATTHEW MARTEL, as an individual, and as the Warden from  
19 California Rehabilitation Center, GUILLEMINA HALL MURRAY, as an  
20 individual, and as the Warden from California Rehabilitation  
21 Center, and defendant District Attorney BONNIE DUMANIS, and  
22 defendant SHERIFF WILLIAM KOLENDER, and each of them, plaintiff  
23 CHARLES SMALL was wrongfully detained and wrongfully imprisoned  
24 for approximately 349 days.

25 20. In the manner described above, each of the defendants,  
26 jointly and severally, in their official capacity and  
27 individually, violated the rights of plaintiff CHARLES SMALL  
28 secured by the Constitution of the United States to every

1 citizen to:

2 (a) Be secure in his person and effects against  
3 unreasonable seizure under the Fourth and Fourteenth Amendments  
4 to the United States Constitution;

5 (b) Not to be deprived of life, liberty or property  
6 without due process of the law, and to not be denied the equal  
7 protection of the law, secured by the Fifth and Fourteenth  
8 Amendments to the United States Constitution; and

9 (c) Be free from cruel and unusual punishment secured by  
10 the Eighth and Fourteenth Amendments to the Constitution of the  
11 United States.

12 21. The acts, conduct and behavior of the defendants and  
13 DOES 1-50, inclusive, were performed knowingly, willfully,  
14 intentionally, oppressively, and maliciously with conscious  
15 disregard of the rights and safety of plaintiff CHARLES SMALL by  
16 reason of which plaintiff is entitled to an award of punitive  
17 damages against defendants.

18

19 **SECOND CAUSE OF ACTION**

20 **(False Imprisonment)**

21 22. Plaintiff hereby incorporates by reference the  
22 allegations contained in Paragraphs 1 through 21 of the First  
23 Cause of Action as if fully plead here.

24 23. The true names and capacities, whether individual,  
25 corporate, public, associate or otherwise of defendants, Does 1  
26 through 50, inclusive, are unknown to plaintiff, and each of  
27 them, who therefore sue said defendants by such fictitious names.  
28 Plaintiff is informed and believes and alleges that each of the

1 defendants herein designated as a DOE is responsible in some  
2 manner for the alleged events and happenings that caused injuries  
3 and damages to the plaintiffs, and each of them.

4 24. On January 24, 2008, the California Court of Appeals,  
5 4<sup>th</sup> District, ruled that CHARLES SMALL was not lawfully being held  
6 by the defendants and DOES 1-50, and defendants failed to show  
7 that their delay in filing the petition against CHARLES SMALL  
8 resulted in good faith mistake of law or fact. CHARLES SMALL  
9 lawfully should have been released on March 25, 2007, but  
10 defendants and DOES 1-50, instead unlawfully imprisoned CHARLES  
11 SMALL until March 10, 2008. As a result of the said wrongful  
12 conduct of the defendants, and DOES 1-50, specifically defendants  
13 MATTHEW MARTEL, as an individual, and as the Warden from  
14 California Rehabilitation Center, GUILLEMINA HALL MURRAY, as an  
15 individual, and as the Warden from California Rehabilitation  
16 Center, and defendant District Attorney BONNIE DUMANIS, and  
17 defendant SHERIFF WILLIAM KOLENDER, and each of them, plaintiff  
18 CHARLES SMALL was wrongfully detained and wrongfully imprisoned  
19 for approximately 349 days.

20 25. As a further result of the wrongful conduct of the  
21 defendants, MATTHEW MARTEL, as an individual, and as the Warden  
22 from California Rehabilitation Center, GUILLEMINA HALL MURRAY,  
23 as an individual, and as the Warden from California  
24 Rehabilitation Center, and DOES 1-50, and each of them,  
25 plaintiff was prevented from continuing employment in the same  
26 capacity from being wrongfully detained and wrongfully  
27 imprisoned, which thus resulted in lost earnings and decreased  
28 work performance in an economic amount which plaintiff will

present according to proof at trial.

### **THIRD CAUSE OF ACTION**

**(Negligence)**

26. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 25 as though fully set forth herein.

27. Plaintiff believes and asserts that defendants, MATTHEW MARTEL, as an individual, and as the Warden from California Rehabilitation Center, GUILLERMINA HALL MURRAY, as an individual, and as the Warden from California Rehabilitation Center including DOES 1-50, had a duty to act in a reasonable manner and not wrongfully imprison persons, including CHARLES SMALL, on an improper petition that unconstitutionally imprisoned CHARLES SMALL and violated plaintiff CHARLES SMALL'S constitutional rights.

28. As a result of the said wrongful conduct of the defendants, and each of them, plaintiff CHARLES SMALL was still wrongfully detained and wrongfully imprisoned for approximately 349 days.

29. As a further result of the wrongful conduct of the defendants, and each of them, plaintiff was prevented from continuing employment in the same capacity from being wrongfully arrested, wrongfully detained, and wrongfully imprisoned, which thus resulted in lost earnings and decreased work performance in an economic amount which plaintiff will present according to proof at trial.

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**COMPLAINT**

## PRAYER FOR DAMAGES

(Applicable to each cause of action for damages)

Plaintiff prays for judgment against defendants, and each of them, individually, and jointly and severally, as follows:

1. For general damages according to proof at time of trial;

2. For special damages, according to proof at time of trial;

3. For attorneys fees in an amount to be determined subsequent to trial (42 U.S.C. section 1988);

4. As against only the individual defendants, for punitive damages in an amount which this Court shall consider to be just and proper;

5. For costs of suit and for such other relief that the Court deems just and proper.

DATED:

RITTER & ASSOCIATES

By:

DWIGHT F. RITTER, ESQ.  
KAREN ALBENCE, ESQ.  
Attorneys for Plaintiff  
CHARLES SMALL



“Attachment”

MATTHEW MARTEL, as an individual, and as the Warden from the California Rehabilitation Center; GUILLERMINA HALL MURRAY, as an individual, and as the Warden from the California Rehabilitation Center; SHERIFF WILLIAM KOLENDER, as an individual, and on behalf of THE GEORGE BAILEY DETENTION FACILITY; BONNIE DUMANIS, as an individual, and DOES 1-50.

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS000274  
Cashier ID: sramirez  
Transaction Date: 04/30/2009  
Payer Name: DWIGHT RITTER

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CIVIL FILING FEE

For: SMALL V. MARTEL, ET AL  
Case/Party: D-CAS-3-09-CV-000913-001  
Amount: \$350.00

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CHECK

Check/Money Order Num: 6764  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

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There will be a fee of \$45.00  
charged for any returned check.